

### **REMARKS**

The Office Action dated 17 December 2003 has been reviewed. Claim 2 stands cancelled without prejudice or disclaimer, claims 1 and 4 are currently amended, claims 3 and 5-14 were previously presented, and claim 15 is newly added. Thus, claims 1 and 3-15 remain pending and are submitted for reconsideration. No new matter has been added.

The Examiner is thanked for indicating that claims 4-11 recite allowable subject matter. In accordance with the Examiner's helpful suggestion, claim 4 has been rewritten in independent form including all of the features of claims 1 and 3 from which claim 4 depended, and the rejections under 35 U.S.C. § 112 have been overcome as discussed hereinafter. It is respectfully submitted that claims 4-11 are allowable.

### **Summary of the Office Action**

Claims 1 and 3-14 are currently pending, of which claim 1 is independent.

Claim 2 was cancelled without prejudice or disclaimer.

Claims 1 and 3-14 were rejected under 35 U.S.C. § 112, first paragraph.

Claims 1 and 3-14 were rejected under 35 U.S.C. § 112, second paragraph.

Claims 1, 3 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,685,981 to Jones.

Claims 1, 3 and 12-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,078,686 to Karesh in view of Jones.

### **The Title**

The title was objected to as not being descriptive. The title was amended 24 February 2003 to read "Container Equipped with at Least One Deformable Closure Device." Applicants submit that this title is descriptive of the claimed invention. Accordingly, withdrawal of this objection is respectfully requested. If the Examiner does not feel that this title is suitably descriptive, the Examiner is invited to suggest an alternate title.

### **The Claims are Patentable Under 35 U.S.C. § 112**

Claims 1 and 3-14 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Further, claims 1 and 3-14 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. These rejections are respectfully traversed in view of the following comments.

Section 3 of the Office Action includes the assertion that the invention recited in claim 1 is contradictory to the specification. In particular, the Office Action asserts that page 7, lines 8-18, of Applicants' specification describes a sleeve that surrounds elastic members, and alleges that this is contradictory to Applicants' claim 1. This assertion is respectfully traversed.

The reference that is made in the Office Action is to a portion of a paragraph that includes one additional sentence (page 7, lines 18-22). The entire paragraph is repeated as follows:

Figure 6 shows how the two rings 30 and 50, the elastic bands 40 and the sleeve 60 are arranged and connected together axially. Thus, the end 62 of the sleeve 60 is fixed to the outer surface 52 of the second ring, e.g. by hot-melt adhesive bonding or by stitching. The sleeve 60 then passes through the center C of the first ring 30 and passes between each pair of elastic bands 40. It is at this location, roughly in the middle part M of the sleeve, that its diameter D is restricted by the elastic bands 40, such that the closure device 10 is effectively closed. The other end 64 of the sleeve 60 is then stitched or hot-melt bonded to the outer surface 32 of the first ring 30 so that each end of the sleeve 60 is folded out on each side of its middle part M.

The first sentence of the paragraph states that Applicants' Figure 6 illustrates an example of connecting together four components: flat ring 30, elastic bands 40, support ring 50, and sleeve 60. The second sentence of the paragraph describes an example of connecting support ring 50 and sleeve 60. The third and fourth sentences of the paragraph describe an example of interrelating the elastic bands 40 and the sleeve 60. Specifically, with reference to Figure 6, a middle part M along the axial length L of the sleeve 60 passes between and is constricted by the cooperating elastic bands 40, which intersect roughly at the center C of the flat ring 30 (*See also* Applicants' specification as originally filed at page 6, lines 21-25) and define a through opening 45 (*See also* Applicants' specification as originally filed at page 6, lines 30-34, and Applicants' Figure 2 and 3). The fifth and final sentence of the paragraph describes an example of connecting flat ring 30 and sleeve 60 such that the ends 62,64 of the sleeve 60 on either side of the middle part M are folded over one another. Thus, the sleeve 60 defines in its fold a disk-shaped annular space and defines a central opening. The disk-shaped annular space contains the elastic bands 40, and the variable diameter of the central opening is elastically restricted by the elastic bands 40.

Thus, the elastic bands 40 surround the closure member, e.g., sleeve 60, as described in the third and fourth sentences of the paragraph, and at the same time, the elastic bands 40 are contained by the sleeve 60, as described in the fifth (and second) sentence of the paragraph. Therefore, it is respectfully submitted that the description in Applicants' specification of an example in which the fold of the sleeve 60 contains the elastic bands 40 is not intrinsically contradictory with Applicants' recitation in claim 1 of "elastically deformable elastic bands which intersect each other and surround a closure member."

It is respectfully submitted that the rejections under 35 U.S.C. § 112, first paragraph, are in error and should be withdrawn.

Section 4 of the Office Action includes the assertion that the "structure of the claims is not clearly set forth" and asks the questions "[w]hat is the closure member and how do the elastic bands surround it?" It is not clear what the Office Action intends by asserting that the claim structure (the presentation, arrangement and relationship of the claims?) is not set forth clearly. However, as to the questions that were posed in the Office Action, according to Applicants' specification as originally filed, an example of a closure member is the sleeve 60 and the elastic bands 40 surround the middle part M of the sleeve 60, as discussed above. This is also described at page 7, lines 4-6, of Applicants' specification as originally filed, which states that the "sleeve 60 acts as a closure member when working with the elastic bands 40." Thus, it is respectfully submitted that the rejections under 35 U.S.C. § 112, second paragraph, also are in error and should be withdrawn.

It is respectfully submitted that for at least these reasons, claims 1 and 3-14 fully satisfy 35 U.S.C. § 112, and that the rejections thereunder should be withdrawn.

**The Claims are Patentable Under 35 U.S.C. § 103**

Claims 1, 3 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,685,981 to Jones. And claims 1, 3 and 12-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,078,686 to Karesh in view of Jones. These rejections are respectfully traversed in view of the following comments.

Applicants have amended claim 1 in the spirit of the Examiner's Amendment, which was proposed in the teleconference conducted 30 April 2003. It is respectfully submitted that the amendments to claim 1 are solely for the purposes of expediting the prosecution of the present

application. The amendments to claim 1 are not for the purpose of establishing patentability nor do the amendments to claim 1 narrow the scope of the claim. Claim 1 recites a combination of features that includes a “closure mechanism that is comprised of elastically deformable elastic bands which intersect each other and cooperate with each other to define an opening through which a closure member extends and which elastic bands surround the closure member such that when the elastically deformable elastic bands are in a state of rest under no external stress the closure member is closed.” Support for this combination of features is found in Applicants’ specification and drawings as originally filed, for example, at page 6, lines 14-36, and Figures 2 and 3.

Jones shows in Figures 5 and 6, and states in column 3, lines 44-47 and 54-56, that “[i]t is, therefore, desirable to further tension the wires in order that they will be held straight and against substantial flexing relative to one another...by forcing member 14 to move in perpendicular relation to the plane of strands 9.” Karesh shows in Figures 1 and 2, and states in column 1, lines 54-55, that a “screw cap 26 (metal or plastic) is provided at each end of the container.” Therefore, neither Jones nor Karesh, whether considered alone or in combination, teaches or suggests the claimed combination of features including a “closure mechanism that is comprised of elastically deformable elastic bands which intersect each other and cooperate with each other to define an opening through which a closure member extends and which elastic bands surround the closure member such that when the elastically deformable elastic bands are in a state of rest under no external stress the closure member is closed.” Applicants respectfully request that the rejections be withdrawn and that claim 1 be indicated as allowable.

Claims 3 and 12-14 depend from allowable claim 1, and therefore recite the same allowable combination of features, as well as reciting additional features that further distinguish over the applied prior art. For at least these reasons, claims 3 and 12-14 are allowable over the applied prior art.

New claim 15 depends from allowable claim 4, and therefore recites the same allowable combination of features, as well as reciting additional features that further distinguish over the applied prior art. Support for the subject matter of new claim 15 may be found, e.g., in paragraph 0036 of Applicants’ specification as originally filed. For at least these reasons, claim 15 is also allowable over the applied prior art.

**CONCLUSION**

It is respectfully submitted that the application is now in condition for allowance and an early notification of such is earnestly solicited. Should the Examiner feel that there are any issues outstanding after consideration of this reply, the Examiner is invited to contact Applicant's undersigned representative to expedite the prosecution.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,  
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